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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/612,543	07/07/2000	Makoto Funabashi	1982-0153P	9387

7590 01/07/2004
Birch Stewart Kolasch & Birch LLP
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EXAMINER

CLEVELAND, MICHAEL B

ART UNIT PAPER NUMBER

1762

DATE MAILED: 01/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/612,543

Applicant(s)

FUNABASHI, MAKOTO

Examiner

Michael Cleveland

Art Unit

1762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(b).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attached.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 14-19.

Claim(s) objected to: _____.

Claim(s) rejected: 1-13 and 20.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

DETAILED ACTION

1. The proposed After Final amendment will not be entered because it raises new issues for further search and consideration, such as the new limitation of final mesh size in claims 2-4, 6-13, and 20. However, entry of the amendment would not render the claims patentable for the reasons discussed below.

Response to Arguments

2. Applicant's arguments filed 11/20/2003 have been fully considered but they are not persuasive.

Applicant argues that Leblans does not disclose a final mesh size less than 50 microns. The argument is unconvincing because Leblans teaches that the collected phosphors are between 2 and 40 microns, thereby suggesting a final mesh size of 2 microns. 2 microns is less than 50 microns.

Applicant's arguments regarding Aller (that ball milling would destroy the properties of a stimutable phosphor) are noted, but they are unconvincing because 1) they are unsupported by evidence, 2) they are contradicted by Leblans, which produces its stimutable (col. 3, line 67-col. 4, line 2) phosphor by ball milling, see Example 1), and 3) they do not address the reason for which Aller was discussed; Leblans already indicates that phosphor particles less than 2 microns can be separated from those larger than 2 microns. Aller was cited for its discussion of classification of a composition of binder and phosphor (in contradiction of Applicant's argument on pp. 10-11 of the response filed 4/24/2003 that one of ordinary skill in the art would not have expected a composition containing phosphor particles and a binder to be finely classifiable).

Applicant argues that the ball milling of Leblans destroys the stimulability of the phosphor. The argument is incorrect. Leblans produces stimutable phosphors (col. 3, line 67-col. 4, line 2).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cleveland whose telephone number is (571) 272-1418. The examiner can normally be reached on Tuesday-Friday and alternate Mon, 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on (703) 272-1415. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

MBC

Michael Cleveland
Patent Examiner
December 31, 2003

MICHAEL BARR
PRIMARY EXAMINER

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